

Private foundation self-dealing; U.S. Congressmen reimbursed for foreign travel. Reimbursement by a private foundation for travel, meals, and lodging expenses incurred by U.S. Congressmen it chooses to participate in a conference it cosponsors in a foreign country does not come within the exception to self-dealing set forth in section 4941(d)(2)(G)(vii) of the Code.

Advice has been requested whether payments by a private foundation to members of a legislative body for transportation, meals, and lodging incident to attending a conference sponsored by the private foundation in a foreign country constitute acts of self-dealing within the meaning of section 4941(d)(1)(F) of the Internal Revenue Code of 1954.

The organization is exempt from Federal income tax as an organization described in section 501(c)(3) of the Code and is a private foundation as defined in section 509(a).

As part of its charitable, educational, and scientific purposes, the foundation cosponsors a series of conferences with a similar organization in a foreign country. The purpose of the conferences is to provide eminent scientists, business men and government leaders from the two countries with an opportunity for informal discussion and communication on major international issues and problems. The conferences are held alternately in the United States and the foreign country.

Among those chosen to participate, during the year in which the conference is held in the foreign country, will be several members of the United States Congress. These members will be chosen on the basis of their particular interest or expertise in the program area of the conference and on the basis of their expected contribution to the conference.

The foundation intends to reimburse such Members of Congress for their round-trip airfares to the foreign country and for their hotel accommodations and meal expenses. All other expenses will be borne by the individual participants.

Section 4941(a) of the Code imposes a tax on any act of self-dealing between a disqualified person and a private foundation.

According to section 4946(a)(1)(I) of the Code government officials are disqualified persons for purposes of section 4941.

Under section 4946(c)(1) of the Code the term 'government official' as used in section 4941 includes any individual who holds an elective public office in the executive or legislative branch of the Government of the United States.

Section 4941(d)(1)(F) of the Code provides, with an exception not herein relevant, that an act of self-dealing occurs if a private foundation makes any payment of money or other property to a government official.

An exception to this general prohibition is found in section 4941(d)(2)(G)(vii) of the Code which permits a private foundation (within certain limitations) to pay or reimburse a government official for traveling expenses incurred for travel solely from one point in the United States to another point in the United States.

Section 53.4941(d)-3(e)(7) of the Foundation Excise Tax Regulations further states that in the case of a government official section 4941(d)(1) of the Code shall not apply to any payment or reimbursement of traveling expenses (including amounts expended for meals and lodging) for travel solely from one point in the United States to another point in the United States in connection with one or more purposes described in section 170(c)(1) or (2)(B).

Section 53.4941(d)-3(e)(9) of the regulations states that if a government official attends or participates in a conference sponsored by a private foundation, the allocable portion of the cost of such conference and other non-monetary benefits (for example, benefits of a professional, intellectual, or psychological nature, or benefits resulting from the publication or the distribution to participants of a record of the conference) as well as the payment or reimbursement of expenses (including reasonable advances for expenses anticipated in connection with such a conference in the near future), received by such government official as a result of such attendance or participation shall not be subject to section 4941(d)(1) of the Code, so long as the conference is in furtherance of the exempt purposes of the foundation.

Section 4941(d)(2)(G)(vii) of the Code and section 53.4941(d)-3(e)(7) of the regulations are specific in providing that the only payments made to a government official by a private foundation for travel expenses which may be excluded from the term 'self-dealing' for purposes of section 4941(d)(1) are those made solely for travel from one point in the United States to another point in the United States.

Section 53.4941(d)-3(e)(9) of the regulations is not intended to extend or to state a further exception to the above provisions. The benefits or payments intended to be covered by this section are only those which are of an incidental type. These would include any intellectual or scientific benefits derived from participating in the conference or the receipt of any publications or reports distributed in connection with the conference. For example, payment for, or reimbursement of, expenses involved in the preparation of or printing of a report or other paper to be used by the government official as part of

his participation in the foreign conference would not be an act of self-dealing under the provisions of section 4941(d)(1) of the Code.

Accordingly, since the payments in question are not for travel solely from one point in the United States to another point in the United States, they do not come within the exception to self-dealing set forth in section 4941(d)(2)(G)(vii) of the Code. Further, since Members of Congress are government officials within the meaning of section 4946(c)(1), the payments or reimbursement of such expenses would constitute acts of self-dealing within the meaning of section 4941(d).